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APPLE INC., APPLECARE SERVICE
11 COMPANY, INC., and APPLE CSC INC.

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 FABRIENNE ENGLISH, on behalf of herself and
18 all others similarly situated,

19 Plaintiffs,

20 v.

21 APPLE INC., APPLECARE SERVICE
22 COMPANY, INC., and APPLE CSC INC.,

23 Defendants.

Case No. 3:14-cv-01619-WHO

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S AMENDED NOTICE
OF RELATED CASE AND
ADMINISTRATIVE MOTION**

Judge: Hon. William H. Orrick

Complaint Filed: November 4, 2013
Transfer to N.D. Cal.: April 3, 2014
Trial Date: August 15, 2016

1 Defendants respectfully submit this brief response to Plaintiff's Amended Notice of
2 Related Case and Administrative Motion to relate *McRight v. Apple Inc.*, Case No. 5:15-cv-
3 03330-HRL. (ECF No. 196.) By filing this response, Apple and AppleCare Service Co. do not
4 waive service of process with respect to the *McRight* complaint, including any defenses arising
5 out of insufficient service of process.

6 Defendants agree that the two cases should be related; the new plaintiff, Joanne McRight
7 is a member of the putative class in *Adkins*. The *McRight* complaint is in essence a "fourth
8 amended complaint" in *Adkins*, filed in a direct effort to end-run this Court's March 2, 2015
9 Order that "additional amendment of the complaint will not be allowed." (ECF No. 138.) This
10 latest filing is a continuation of Plaintiff's counsel's pattern of improper litigation conduct. That
11 conduct has caused—and continues to cause—unending and unnecessary distractions and delays
12 in this litigation, has frustrated the efficient resolution of class issues and this dispute, and has
13 caused Defendants to incur unnecessary expenses to respond to such conduct. Defendants
14 respectfully request that the Court schedule an in-person case management conference to address
15 Plaintiff's counsel's conduct in filing the *McRight* case.

16 Plaintiff admits the new complaint involves the same issues, the same defendants, and the
17 same purported classes as *Adkins*, stating "[t]hese cases involve the exact same transactions and
18 events (*i.e.*, the purchase of electronic devices and AppleCare and AppleCare+ by consumers
19 from Apple, Inc., and the replacement of those devices pursuant to AppleCare and AppleCare+),
20 identical defendants, allegations based on these transactions and events, and similar proposed
21 classes of plaintiffs." (ECF No. 196 at 2:22-3:2.) The *McRight* complaint effectively seeks to
22 add a new class plaintiff without leave of Court and in violation of the Court's order prohibiting
23 amendments to the complaint. (Notably, McRight would be the fifth such plaintiff, three of the
24 previous four having withdrawn). There is thus no question that this is an amended complaint,
25 not a new lawsuit.

26 Moreover, the *McRight* complaint was filed more than two weeks after Plaintiff's motion
27 for class certification was filed and two days after this Court ordered that Plaintiff's counsel make
28

1 no further filings respecting class certification until her reply. (ECF No. 194.) The filing appears
2 to be an attempt to amend the *Adkins* complaint to conform it to new facts and damages theories
3 asserted for the first time in the *Adkins* class certification motion, in derogation of the Court's
4 orders. It is difficult to see the timing of Plaintiff's counsel's filing as anything other than an
5 attempt to derail the current class certification and case schedule or, worse, to create the ability to
6 litigate serial class motions.

7 This is not the first time Plaintiff's counsel has violated the Court's orders in this case
8 (*e.g.*, ECF No. 109), but this latest conduct is the most egregious. Accordingly, Defendants
9 respectfully request that the Court address Plaintiff's counsel's conduct during the in-person case
10 management conference requested by Defendants, and grant such other relief as the Court deems
11 just and proper.¹

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13 Dated: July 23, 2015

Respectfully submitted,

14 MORRISON & FOERSTER LLP

15 By: /s/ Purvi G. Patel
16 Purvi G. Patel

17 *Attorneys for Defendants*
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24 ¹ See, *e.g.*, Fed. R. Civ. Proc. 11(b), (c) (a court may issue appropriate orders to address
25 filings that are presented for an improper purpose, such as to harass, cause unnecessary delay, or
26 needlessly increase the cost of litigation); Fed. R. Civ. Proc. 16(f) (a court may issue any just
27 orders if a party or its attorney fails to obey a scheduling or other pre-trial order); 28 U.S.C.
28 § 1927 (a court may require an attorney to pay excess costs, expenses, and attorneys' fees
incurred as a result of that attorney's conduct that "unreasonably and vexatiously" multiplies the
proceedings); *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43-45 (1991) (courts have the inherent
power to manage their own proceedings and to control the conduct of those who appear before
them, including the power to dismiss an action for conduct that abuses the judicial process).